

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 PLAINTIFF,) CASE NO. 2:21-cr-89
)
 vs.)
)
 JAMES VERL BARLOW, ET AL.,)
)
 DEFENDANTS.)
)
 _____)

TRANSCRIPT OF **ARRAIGNMENTS ON INDICTMENT**
AND JOINT REPRESENTATION CONFLICT WAIVERS PROCEEDINGS
BEFORE THE HONORABLE SARAH D. MORRISON
WEDNESDAY, SEPTEMBER 1, 2021; 3:15 P.M.
COLUMBUS, OHIO

FOR THE PLAINTIFF:
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Proceedings recorded by mechanical stenography,
transcript produced by computer.

Wednesday Afternoon Session,

September 1, 2021

- - -

(The following proceeding was held in open court.)

THE COURT: Thank you. Ms. Bragg, will you please call the case.

DEPUTY CLERK: United States of America versus James Verl Barlow and Matthew Taylor Barlow, Case No. 2:21-cr-89-1 and -2.

THE COURT: Thank you. If counsel will please enter their appearances, starting with counsel for the government.

MR. HUNTER: Good afternoon, Your Honor. Michael Hunter on behalf of the United States.

THE COURT: Thank you.

MR. WILLIAM BROWN: Good afternoon, Your Honor. William Brown on behalf of Matthew Barlow.

MR. MISHLER: Good afternoon, Your Honor. Christopher Mishler appearing on behalf of Defendant James Barlow.

MR. STEVEN BROWN: Steve Brown, Your Honor, local counsel on behalf of Jim and Matt Barlow.

THE COURT: Thank you. So it's Mr. Mishler on behalf of -- I'm sorry. Do that one more time.

MR. MISHLER: James Barlow.

THE COURT: James Barlow.

1 MR. WILLIAM BROWN: Brown for Matt.

2 THE COURT: Okay. Thank you.

3 MR. WILLIAM BROWN: Thank you.

4 THE COURT: So, Mr. Hunter, what is the status of this
5 proceeding?

6 MR. HUNTER: Your Honor, first, we're before the Court
7 this afternoon for indictment or, excuse me, an arraignment on
8 an indictment.

9 In May of this year, the federal grand jury returned a
10 one-count indictment charging each of these defendants with
11 conspiracy to possess with intent to distribute a psychedelic
12 mushroom analogue.

13 We're before the Court this afternoon for arraignment,
14 and we're also before the Court this afternoon for a Rule 44
15 hearing on a waiver of a conflict for appearance of counsel in
16 this case.

17 THE COURT: Okay. Great. Do you agree, Mr. Mishler?

18 MR. MISHLER: Yes, Your Honor. That's my
19 understanding as well.

20 THE COURT: And Mr. Brown?

21 MR. WILLIAM BROWN: Also correct, Your Honor.

22 THE COURT: And so -- am I right? -- you two are also
23 law partners, so it's not just -- so when we're talking about
24 the potential conflict, it's not just Steven Brown as local
25 counsel, but it's also both of you as law partners, correct?

1 MR. WILLIAM BROWN: Correct, Your Honor.

2 MR. MISHLER: Yes, Your Honor.

3 THE COURT: Great. So -- so that I can determine
4 that -- that -- for Mr. James Barlow and Mr. Matthew Barlow, so
5 that I can determine whether you fully understand your rights
6 and the potential for a conflict, because as I just -- you
7 heard me ask, you have -- two of your lawyers are practicing at
8 the same law firm, and then your local counsel here in
9 Columbus, Mr. Steven Brown, is intending to represent both of
10 you too.

11 So I have to make sure that you both understand your
12 rights and understand the potentials for conflicts and what
13 really that means for you.

14 So what I need to do -- I'm going to place -- we'll do
15 it one at a time, but I'm going to place both of you under
16 oath. Let's start with Mr. James Barlow.

17 DEFENDANT JAMES BARLOW: Yes, Your Honor.

18 DEPUTY CLERK: Can you raise your right hand?

19 THE COURT: To the best that you can. I know that
20 it's hard.

21 DEPUTY CLERK: You do solemnly swear that the answers
22 given to the questions propounded to you in this proceeding
23 shall be the truth, the whole truth, and nothing but the truth
24 as you shall answer unto God.

25 If you so swear, please say I do.

1 DEFENDANT JAMES BARLOW: I do.

2 THE COURT: Thank you. You may put your hand down.
3 Keep standing, because I'm going to ask you some questions.

4 So do you understand that you are now under oath, so if
5 you give false answers to any of my questions, you can be
6 charged with perjury or with making a false statement?

7 DEFENDANT JAMES BARLOW: Yes, Your Honor.

8 THE COURT: Okay. Please state your full name.

9 DEFENDANT JAMES BARLOW: James Verl Barlow.

10 THE COURT: How old are you?

11 DEFENDANT JAMES BARLOW: I am 45 years old.

12 THE COURT: How far did you go in school?

13 DEFENDANT JAMES BARLOW: I have double bachelor's
14 degrees in French and computer science.

15 THE COURT: Okay. And have you ever been treated for
16 a mental illness or for a substance abuse of any kind?

17 DEFENDANT JAMES BARLOW: Your Honor, I had a low-level
18 PTSD after one of my tours overseas, but it hasn't been an
19 issue as of late.

20 THE COURT: Okay. So you are not on any medication or
21 anything for that?

22 DEFENDANT JAMES BARLOW: No, I'm not, Your Honor.

23 THE COURT: Have you taken any medication, narcotic
24 drugs, or drunk any alcohol in the last 24 hours?

25 DEFENDANT JAMES BARLOW: No, Your Honor.

1 THE COURT: Do you have any concerns about
2 Mr. Barlow's competence, Mr. Mishler?

3 MR. MISHLER: I don't, Your Honor.

4 THE COURT: So I do -- this is the first time I've
5 done this, so bear with me.

6 I do find that Mr. James Barlow is in full possession of
7 his faculties. He is not suffering from any apparent physical
8 or mental illness or under the influence of narcotics or
9 alcohol.

10 I do find he is competent and understands the
11 proceedings in which he is engaged.

12 So these are serious charges that you are facing,
13 Mr. Barlow. And what I'm going to do now -- Mr. Hunter, what
14 are the maximum penalties for the offense?

15 MR. HUNTER: Your Honor, as currently indicted, the
16 sole charge in the indictment carries a maximum penalty of up
17 to 20 years of incarceration, a fine of up to \$1 million, a
18 period of supervised release from three years to life, and a
19 \$100 special assessment.

20 THE COURT: Do you have any questions about the
21 potential penalties for the offense, Mr. Barlow?

22 DEFENDANT JAMES BARLOW: No, Your Honor.

23 THE COURT: If at any time you don't understand
24 something or have any questions, and you want to consult with
25 your lawyer today, please let me know that. We can also

1 continue this hearing to another day if you wish to do so.

2 I do have to advise you that the United States
3 Constitution gives every defendant the right to the effective
4 assistance of counsel.

5 When one lawyer represents two or more defendants in a
6 case, the lawyer may have trouble representing all of the
7 defendants with the same fairness.

8 This is a conflict of interest that denies the defendant
9 the right to effective assistance of counsel.

10 Such conflicts are always a potential problem because
11 different defendants may have different degrees of involvement,
12 and each defendant has the right to a lawyer who represents
13 only him or her.

14 So there are ways that dual representation can work to
15 your disadvantage, and so I am now going to advise you on some
16 of those ways that it can work to you as a disadvantage to have
17 a shared law firm and lawyers with Mr. Matthew Barlow.

18 So dual representation may inhibit or prevent counsel
19 from conducting an independent investigation in support of each
20 defendant's case.

21 For example, the attorney-client privilege may prevent
22 you from -- prevent your lawyer from communicating to you
23 information gathered from another defendant.

24 Do you understand that?

25 DEFENDANT JAMES BARLOW: Yes, I do, Your Honor.

1 THE COURT: The government may offer immunity or offer
2 to recommend a lesser sentence to one defendant for cooperating
3 with the government.

4 Should you receive such an offer, your lawyer ought to
5 advise you whether or not to accept it.

6 But if your lawyer advises you to accept the offer, it
7 may harm the cases of other defendants, including Mr. Matthew
8 Barlow, who is represented by that lawyer.

9 Do you understand that?

10 DEFENDANT JAMES BARLOW: Yes, I do, Your Honor.

11 THE COURT: The government may let a defendant who is
12 not as involved as other defendants plead guilty to lesser
13 charges than the other defendants.

14 After the guilty plea, however, the government may
15 require the defendant to testify.

16 A lawyer who represents more than one defendant might
17 recommend that the first defendant not plead guilty in order to
18 protect the other defendant that the lawyer represents.

19 On the other hand, the lawyer might recommend that the
20 first defendant plead guilty, which might harm the case of
21 other defendants.

22 Do you understand that?

23 DEFENDANT JAMES BARLOW: Yes, I do, Your Honor.

24 THE COURT: Dual representation may affect how your
25 lawyer exercises peremptory challenges or challenges for cause

1 during jury selection if this case should go to trial.

2 Potential jurors, who may be perceived as favorable to
3 you, may be perceived as harmful to another defendant; or
4 jurors who may be perceived as favorable to other defendants
5 may be harmful to you.

6 Do you understand that?

7 DEFENDANT JAMES BARLOW: Yes, I do.

8 THE COURT: Sometimes a defendant who is represented
9 by a lawyer will take the stand to testify in his or her own
10 behalf.

11 In order to represent the other defendants fairly, the
12 lawyer should question the defendant on the stand as completely
13 as possible.

14 However, the lawyer may not be able to do that because
15 he or she cannot ask the defendant as a witness about anything
16 that the defendant has told the lawyer in confidence.

17 Do you understand?

18 DEFENDANT JAMES BARLOW: Yes, I do.

19 THE COURT: The best defense for a single defendant
20 often is the argument that while the other defendants may be
21 guilty he or she is not.

22 A lawyer representing two or more defendants cannot
23 effectively make such an argument.

24 Do you understand that?

25 DEFENDANT JAMES BARLOW: That, I do, Your Honor.

1 THE COURT: Evidence that helps one defendant might
2 harm another defendant's case.

3 When one lawyer represents two or more defendants, the
4 lawyer might offer or object to evidence that could help one
5 defendant but harm another.

6 Do you understand?

7 DEFENDANT JAMES BARLOW: Yes, Your Honor.

8 THE COURT: And also regarding sentencing, dual
9 representation would prohibit the lawyer from engaging in
10 posttrial negotiations with the government as to full
11 disclosure by one defendant against the other.

12 It would also prohibit the lawyer from arguing the
13 relative culpability of the defendants at sentencing to me.

14 Do you understand that that?

15 DEFENDANT JAMES BARLOW: Yes, I do, Your Honor.

16 THE COURT: So, Mr. Mishler, can you assure the Court
17 that there would be no -- that there will be no conflict that
18 could result in a lack of effective assistance of counsel or
19 other prejudice to Mr. James Barlow?

20 MR. MISHLER: Your Honor, with the status of the case
21 and the footing that we're currently on, I can assure you that,
22 based on that, there is not currently a conflict.

23 THE COURT: Okay. So, Mr. Barlow, I do recommend that
24 you consult with other independent counsel about the wisdom of
25 waiving the right to separate counsel.

1 I can make court-appointed counsel available, if
2 appropriate, and I can -- I will allow an adjournment if you
3 wish to do that.

4 Do you want to consult with another lawyer about this
5 issue of joint representation?

6 DEFENDANT JAMES BARLOW: At this time, no, Your Honor.

7 THE COURT: I do have before me the written joint
8 representation conflict waiver that it looks like Mr. Mishler
9 gave you, and it is very thorough. It's two pages, and it
10 appears that you signed it on July 3rd of 2021.

11 Do you know what document I'm referring to?

12 DEFENDANT JAMES BARLOW: Yes, I do, Your Honor.

13 THE COURT: Okay. And, in fact, did you sign the
14 letter for joint representation conflict waiver?

15 DEFENDANT JAMES BARLOW: Yes, that is my signature,
16 Your Honor.

17 THE COURT: And do you want to waive your right to
18 separate counsel?

19 (Pause in proceeding.)

20 DEFENDANT JAMES BARLOW: Wait -- yes.

21 THE COURT: Let me ask it again. I've gone over a
22 lot. So I'll ask it just so it's a clear question.

23 Do you want to waive your right to separate counsel? So
24 do you -- I'll ask it this way. Do you want to be represented
25 by the same law firm and the same lawyers as --

1 DEFENDANT JAMES BARLOW: Yes, I do.

2 THE COURT: -- the same lawyers as Mr. Matthew Barlow?

3 DEFENDANT JAMES BARLOW: Yes, yes.

4 THE COURT: Thank you.

5 I know sometimes these questions have double negatives
6 in them, and they can be hard, so I want to make sure.

7 DEFENDANT JAMES BARLOW: Your Honor, any time I'm
8 waiving a right, I want to make sure I'm using the right words.

9 THE COURT: Thank you. I appreciate it. We want to
10 make sure you know what you are waiving. Thank you.

11 MR. MISHLER: Thank you, Your Honor.

12 THE COURT: So, Mr. Matthew Barlow, will you please
13 stand. And I know you've heard it, but I'm going to really
14 repeat it all. It's good for both of you to hear it twice.

15 So let's begin by placing you under oath. If you could
16 raise your right hand to the best of your ability.

17 DEPUTY CLERK: You do solemnly swear that the answers
18 given to the questions propounded to you in this proceeding
19 shall be the truth, the whole truth, and nothing but the truth
20 as you shall answer unto God. If you so swear, please say I
21 do.

22 DEFENDANT MATTHEW BARLOW: I do.

23 THE COURT: You may put your hand down. Do you
24 understand you are now under oath, so if you give false answers
25 to any of my questions, you can be charged with perjury or with

1 making a false statement?

2 DEFENDANT MATTHEW BARLOW: Yes.

3 THE COURT: Please state your full name.

4 DEFENDANT MATTHEW BARLOW: Matthew Taylor Barlow.

5 THE COURT: And how old are you?

6 DEFENDANT MATTHEW BARLOW: 35.

7 THE COURT: 35. Are you two brothers?

8 DEFENDANT JAMES BARLOW: Yes, ma'am.

9 DEFENDANT MATTHEW BARLOW: Yes.

10 THE COURT: So how far did you go in school?

11 DEFENDANT MATTHEW BARLOW: I have a GED.

12 THE COURT: Have you ever been treated for a mental
13 illness or for substance of abuse of any kind?

14 DEFENDANT MATTHEW BARLOW: I was diagnosed with ADHD
15 when I was 12 and have taken Adderall for it, and that's -- and
16 that's it.

17 THE COURT: Have you -- you are not still taking
18 Adderall as an adult, are you?

19 DEFENDANT MATTHEW BARLOW: No, not since being
20 arrested.

21 THE COURT: Okay. Have you -- so were you taking
22 Adderall at the time of your arrest?

23 DEFENDANT MATTHEW BARLOW: Yes. I was prescribed
24 Adderall.

25 THE COURT: And you haven't been taking that since you

1 have been incarcerated?

2 DEFENDANT MATTHEW BARLOW: I have not.

3 THE COURT: Are you able to understand and follow
4 these proceedings without your ADHD medicine?

5 DEFENDANT MATTHEW BARLOW: Yes, I am, Your Honor.

6 THE COURT: Have you taken any narcotic drugs,
7 medicine or pills, or drunk any alcoholic beverages in the last
8 24 hours?

9 DEFENDANT MATTHEW BARLOW: No, I have not.

10 THE COURT: So, Mr. William Brown, do you have any
11 concerns about Mr. Barlow's competence to engage in these
12 proceedings today?

13 MR. WILLIAM BROWN: No concern, Your Honor.

14 THE COURT: Okay. Thank you.

15 I do then find that Mr. Matthew Barlow is in full
16 possession of his faculties and is not suffering from any
17 apparent physical or mental illness or under the influence of
18 narcotics or alcohol.

19 I do find that he is competent and understands the
20 proceedings in which he is engaged in today.

21 But with that said, if at any time as we go forward, if
22 you don't understand something or you have a question, let me
23 know or you can also consult with your lawyer.

24 Also, as I told your brother, we can continue this
25 hearing for another day if you do want to consult with another

1 lawyer, if you want to take your time and understand anything
2 else.

3 Mr. Hunter already mentioned it, but I think it bears
4 repeating: What's the maximum sentence in this case?

5 MR. HUNTER: Yes, Your Honor. Up to 20 years of
6 incarceration, a period of supervised release from three years
7 to life, a fine of up to \$1 million and a \$100 special
8 assessment.

9 THE COURT: Okay. Do you understand that's the
10 maximum penalty that you are facing, Mr. Barlow?

11 DEFENDANT MATTHEW BARLOW: Yes, I do.

12 THE COURT: The United States Constitution does give
13 every defendant the right to the effective assistance of
14 counsel.

15 When one lawyer represents two or more defendants in a
16 case, the lawyer may have trouble representing all of the
17 defendants with the same fairness.

18 This can be a conflict of interest because it denies
19 that defendant the right to effective assistance of counsel.

20 Such conflicts do pose a potential problem because
21 different defendants may have different degrees of involvement
22 in a crime.

23 Each defendant has the right to a lawyer who represents
24 only him or her.

25 Do you understand that?

1 DEFENDANT MATTHEW BARLOW: Yes, I do.

2 THE COURT: Okay. And I'm going to go through then
3 some of the risks that you are facing by agreeing to dual
4 representation.

5 The first is that dual representation may inhibit or
6 prevent counsel from conducting an independent investigation in
7 support of each defendant's case.

8 For example, the attorney-client privilege may prevent
9 your lawyer from communicating to you information gathered from
10 another defendant.

11 Do you understand that?

12 DEFENDANT MATTHEW BARLOW: Yes.

13 THE COURT: The government may offer immunity or offer
14 to recommend a lesser sentence to one defendant for cooperating
15 with the government.

16 Should you receive such an offer, your lawyer ought to
17 advise you whether or not to accept it. If your lawyer advises
18 you to accept the offer, it may harm the case of the other
19 defendants represented by that lawyer.

20 Do you understand that?

21 DEFENDANT MATTHEW BARLOW: Yes.

22 THE COURT: The government may let a defendant who is
23 not as involved as the other defendants plead guilty to lesser
24 charges than the other defendants.

25 After the guilty plea, however, the government may

1 require that defendant to testify.

2 A lawyer who represents more than one defendant might
3 recommend that the first defendant not plead guilty in order to
4 protect the other defendants that the lawyer represents.

5 On the other hand, the lawyer might recommend that the
6 first defendant plead guilty, which might harm the cases of the
7 other defendants.

8 Do you understand that?

9 DEFENDANT MATTHEW BARLOW: Yes.

10 THE COURT: Dual representation may affect how your
11 lawyer exercises peremptory challenges or challenges for cause
12 during jury selection.

13 Potential jurors, who may be perceived as favorable to
14 you, may be perceived as harmful to another defendant; or
15 jurors who may be perceived as favorable to other defendants
16 may be harmful to you.

17 Do you understand that?

18 DEFENDANT MATTHEW BARLOW: Yes.

19 THE COURT: Sometimes one of the defendants
20 represented by a lawyer will take the stand to testify in his
21 or her own behalf.

22 In order to represent the other defendants fairly, the
23 lawyer should question the defendant on the stand as completely
24 as possible.

25 However, the lawyer may not be able to do that because

1 he or she cannot ask the defendant as a witness about anything
2 the defendant has told the lawyer in confidence.

3 Do you understand that?

4 DEFENDANT MATTHEW BARLOW: Yes.

5 THE COURT: And I think this is, I think, particularly
6 true for you two. You're brothers. So I know you have the
7 familial ties and familial loyalties.

8 But there may be different levels of culpability between
9 the two of you, and so there might be some strategy reasons why
10 it would be better for you to each have an independent counsel.

11 Do you understand that?

12 DEFENDANT MATTHEW BARLOW: Yes.

13 THE COURT: Okay. Do you understand that, Mr. James
14 Barlow?

15 DEFENDANT JAMES BARLOW: Yes, I do, Your Honor.

16 THE COURT: Okay. The best defense for a single
17 defendant is often the argument that while the other defendants
18 may be guilty he or she is not. A lawyer who represents two or
19 more defendants cannot effectively make that argument.

20 Do you understand that, Mr. Barlow?

21 DEFENDANT MATTHEW BARLOW: Yes, I do.

22 THE COURT: Evidence that helps one defendant might
23 harm another defendant's case.

24 When one lawyer represents two or more defendants, the
25 lawyer might offer or object to evidence that could help one

1 defendant but harm another.

2 Do you understand that?

3 DEFENDANT MATTHEW BARLOW: Yes.

4 THE COURT: Regarding sentencing, dual representation
5 would prohibit the lawyer from engaging in posttrial
6 negotiations with the government as to full disclosure by one
7 defendant against the other but also prohibit the lawyer from
8 arguing the relative culpability of the defendants to me when I
9 do sentencing.

10 Do you understand that?

11 DEFENDANT MATTHEW BARLOW: That one, I didn't quite
12 understand.

13 THE COURT: Okay. So let me break it down a little
14 bit for you.

15 So if you plead guilty or if you go to trial, you know,
16 and are found guilty, ultimately I will be the sentencing
17 judge.

18 Obviously, if you're -- if the charges are dismissed or
19 if you are found not guilty, this doesn't come into play.

20 But if you are ultimately found guilty of the offense,
21 as part of the sentencing process, some of the things I look at
22 are like relative culpability to see, when you've got multiple
23 defendants in a case, who are the more culpable, who are the
24 less culpable, to try to differentiate and make sure that
25 everybody's sentence is fair and appropriate for what they did.

1 Also, as part of the posttrial negotiations, sometimes
2 the government will talk about different concessions on the
3 length of sentence if one of the defendants at that point might
4 testify against other defendants or provide the government with
5 information about the crime or about -- or information about
6 other crimes.

7 But under these circumstances, the lawyer wouldn't be
8 able to make all of these arguments about relative culpability
9 because of joint representation.

10 DEFENDANT MATTHEW BARLOW: Oh, okay.

11 THE COURT: Do you understand that?

12 DEFENDANT MATTHEW BARLOW: Yes, I do. Thank you.

13 THE COURT: And also, you know, your lawyers might
14 also not be able to -- to the extent that you might have
15 information about other crimes for which the defendant would be
16 willing to negotiate or bargain, your lawyers might not be able
17 to fully represent you with regard to what you know because of
18 their representation of your brother.

19 Do you understand that?

20 DEFENDANT MATTHEW BARLOW: Yeah.

21 THE COURT: Okay.

22 DEFENDANT MATTHEW BARLOW: Yes.

23 THE COURT: So, Mr. William Brown, can you assure the
24 Court that, to the best of your knowledge, there will be no
25 conflict that could result in a lack of effective assistance or

1 other prejudice to any defendant?

2 MR. WILLIAM BROWN: Your Honor, given the nature and
3 posture of this case, I can make that assurance to the Court.

4 THE COURT: Okay. Thank you.

5 I do -- as I did with your brother -- Mr. Matthew
6 Barlow, I do recommend that you consult with other independent
7 counsel about the wisdom of waiving the right to separate
8 counsel.

9 I can make court-appointed counsel available, if
10 appropriate. And I can also allow you additional time if you
11 would like to take that opportunity.

12 Do you want to take a break so that you can consult with
13 other counsel?

14 DEFENDANT MATTHEW BARLOW: No, I do not.

15 THE COURT: Okay.

16 We talked a moment ago about the joint representation
17 conflict waiver that your attorneys gave you, and that also
18 does give you a lot of information and advise you of the
19 potential conflicts that exist.

20 Do you know the document that I'm referring to?

21 DEFENDANT MATTHEW BARLOW: Yes.

22 THE COURT: And it does appear to me that you signed
23 the joint representation conflict waiver on June 11th, 2021.

24 Did you, in fact, sign that conflict waiver?

25 DEFENDANT MATTHEW BARLOW: Correct. Yes, I did.

1 THE COURT: Okay. Do you want to waive your right
2 to -- do you want to have the same counsel as your brother?

3 I'll ask it that way.

4 DEFENDANT MATTHEW BARLOW: Yes, I do, Your Honor.

5 THE COURT: Okay. Thank you.

6 I accept the waiver, and I find that the waivers are
7 made knowingly and voluntarily, with an understanding of the
8 risks and opportunities there.

9 So I will allow joint representation for both of you
10 going forward.

11 And why don't you keep standing, Matt Barlow, and we'll
12 go ahead then with the arraignment.

13 So, Mr. William Brown, do you want to stand?

14 So I do have -- I do have a copy of the indictment here
15 in front of me. It is a one-count indictment.

16 Mr. Barlow, did you have an opportunity to review the
17 indictment?

18 DEFENDANT MATTHEW BARLOW: Yes, I have, Your Honor.

19 THE COURT: And, Mr. Brown, did you have an
20 opportunity to discuss the indictment with Mr. Matthew Barlow?

21 MR. WILLIAM BROWN: Yes, Your Honor.

22 THE COURT: Did we furnish a copy to Mr. Barlow --
23 excuse me -- did we get you a copy of the indictment so you had
24 a chance to read it, Mr. Barlow?

25 DEFENDANT MATTHEW BARLOW: Yes, I've read it.

1 THE COURT: Okay. And, Mr. Brown, do you want to
2 waive the reading of the indictment here in open court?

3 MR. WILLIAM BROWN: Yes, we waive that, please.

4 THE COURT: So, Mr. Barlow, as I said, there's only
5 one count of the indictment.

6 How do you plead to that count, guilty or not guilty?

7 DEFENDANT MATTHEW BARLOW: Not guilty.

8 THE COURT: Thank you. You may be seated.

9 DEFENDANT MATTHEW BARLOW: Thank you.

10 THE COURT: So, Mr. James Barlow, will you please
11 stand.

12 So, Mr. James Barlow, did you -- have you been furnished
13 with a copy of the charges against you?

14 DEFENDANT JAMES BARLOW: Yes, I have, Your Honor.

15 THE COURT: Okay. Did you have an opportunity to
16 review the indictment with your attorney?

17 DEFENDANT JAMES BARLOW: Yes.

18 THE COURT: So, Mr. Mishler, did you have an
19 opportunity to confer with your client in advance of the
20 arraignment?

21 MR. MISHLER: Yes, Your Honor.

22 THE COURT: Would you like the clerk to read the
23 indictment here in open court, or do you also waive a reading
24 of the indictment?

25 MR. MISHLER: We waive the reading of the indictment,

1 Your Honor.

2 THE COURT: Thank you.

3 So, Mr. James Barlow, how do you plead to the offense
4 charged in Count 1 of the indictment, guilty or not guilty?

5 DEFENDANT JAMES BARLOW: Not guilty.

6 THE COURT: Thank you. You may be seated.

7 So we'll set this matter for trial. What we currently
8 have it scheduled for is Monday, November 29th, a trial to
9 begin in this courtroom at 9:00 a.m.

10 Ms. Bragg is providing to counsel for the government and
11 counsel for both Barlows a copy of the scheduling order. The
12 scheduling order will also go on on the Court's electronic
13 filing system.

14 I do ask that the discovery meeting happen as promptly
15 as possible, but certainly before September 17th.

16 All motions of any kind, including motions in limine,
17 shall be filed on or before November 1st and any opposing
18 briefs by November 8th.

19 We generally don't do reply briefs unless there's leave
20 of court, so I want to flag that for counsel.

21 We'll schedule the matter for a final pretrial
22 conference on Monday, November 22nd, at 2:00, just to prepare
23 for the trial on Monday, November 29th.

24 Oh, and I do have -- for the record, and we'll include
25 this in the file, the report for Mr. James Barlow about the

1 veterans' program that he participated in, so I did get that,
2 so thank you.

3 I'm glad to see that you are taking advantage of the
4 opportunities while you are going through this process.

5 What's the status of bond, Mr. Hunter?

6 MR. HUNTER: Your Honor, each of these defendants has
7 previously been ordered detained.

8 At this time we're asking that this order remain in
9 effect. That may be an issue we come back to the Court on at
10 some time in the future.

11 THE COURT: Okay. Thank you. They will be detained
12 here in Ohio?

13 MR. HUNTER: Yes, Your Honor. They have been both
14 brought to the Southern District of Ohio, and they are being
15 housed at the Butler County Jail.

16 THE COURT: Okay. Thank you.

17 Anything further for the government this afternoon then?

18 MR. HUNTER: No, Your Honor. Thank you.

19 THE COURT: Okay. Anything further for Mr. James
20 Barlow?

21 MR. MISHLER: Just as Mr. Hunter alluded to, we may be
22 revisiting the matter of detention at some point in the future,
23 and there may be some other matters relating to the forfeiture,
24 but we'll bring those before Your Honor.

25 THE COURT: Okay. And I think -- just so you know, I

1 think what we found with one of the other defendants who had
2 been transported here -- because the original detention order
3 was made out of state, correct?

4 MR. MISHLER: Yes, Your Honor.

5 THE COURT: So I think you'll come before me if there
6 are any detention issues, as opposed to our magistrate judge.
7 So -- just for your information, that's what we figured out
8 from the last one. So thank you.

9 MR. MISHLER: That's my understanding as well.

10 THE COURT: All right. Great. Anything further for
11 Matthew Barlow?

12 MR. WILLIAM BROWN: I meant to say this at the
13 beginning. I wanted to thank the Court for granting our
14 *pro hac vice* applications. Thank you for that. It's a
15 pleasure to be here.

16 THE COURT: Sure. Absolutely. You are in good hands
17 with your local counsel, Steven Brown. He's before me quite a
18 bit and does an excellent job.

19 So I appreciate it, and I thank you for your
20 professionalism.

21 And like I said, Mr. Brown knows how to get ahold of my
22 courtroom deputy as those issues come up, and we'll address
23 them quickly for you.

24 MR. WILLIAM BROWN: I appreciate that.

25 MR. MISHLER: Just as an aside, Your Honor, could I

1 have your clerk make a copy of that letter you got on the
2 veterans' program for my file?

3 THE COURT: Yes. We'll get you that.

4 MR. MISHLER: I appreciate that. Thank you.

5 THE COURT: I will tell you: I've not seen this
6 before, so let me get it for you.

7 Mr. Hunter, have you seen a copy?

8 MR. HUNTER: I haven't. But that's fine, Your Honor.

9 THE COURT: Okay. I'll get you a copy as well so you
10 can have it.

11 Great. Well, then this matter will be continued for the
12 final pretrial or if anything else gets filed in the meantime.

13 So thank you, counsel. Thank you, both Mr. Barlows. I
14 appreciate it. Thank you, Mr. Hunter.

15 MR. HUNTER: Thank you, Your Honor.

16 THE COURT: Court will be adjourned.

17 (Proceedings concluded at 3:39 p.m.)

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C E R T I F I C A T E

I, Allison A. Kimmel, do hereby certify that the foregoing is a true and correct transcript of the proceedings before the Honorable Sarah D. Morrison, Judge, in the United States District Court, Southern District of Ohio, Eastern Division, on the date indicated, reported by me in shorthand and transcribed by me or under my supervision.

s/Allison A. Kimmel
Allison A. Kimmel, FAPR, RDR, CRR, CRC
Official Federal Court Reporter
April 17, 2023